

1 TO DEFENDANTS and THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on Thursday, May 26, 2011 at 10:00 a.m., or as soon
3 thereafter as counsel may be heard, before the Honorable Maria-Elena James, in Courtroom B,
4 located on the 15th floor of 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff Jane
5 Doe will and hereby does move for a protective order and to proceed under a pseudonym.

6 Pursuant to Fed. R. Civ. P. 26(c), Plaintiff Jane Doe (“Ms. Doe”) moves this Court to
7 allow her to proceed under a pseudonym and to enter a Protective Order preventing the public
8 disclosure of her identity by Defendants in order to protect her privacy and safety. A proposed
9 Protective Order is attached hereto as Exhibit A.

10 **FACTUAL BACKGROUND**

11 On November 12, 2010, Ms. Doe filed her Complaint against Defendants Giuseppe
12 Penzato and Kesia Penzato. Dkt. No. 1 In that complaint, Ms. Doe describes the serious harm
13 she suffered as a result of her employment by the Penzatos, including injury she received as a
14 victim of human trafficking, forced labor, sexual battery, and invasion of privacy. *Id.* Plaintiff
15 filed her complaint under a pseudonym in order to protect her privacy, and prevent further harm.
16 Plaintiff has also moved into temporary housing for victims of violence. Plaintiff’s Dec. ¶ 3.

17 The Complaint was served on Defendants on February 11, 2011. Dkt. Nos. 6-7. On or
18 around March 1, 2011, Defendants’ counsel, Mia Blackler, contacted Plaintiff’s counsel. Wilson
19 Dec. ¶ 3. Ms. Blackler informed Plaintiff’s counsel that she intended to reveal Ms. Doe’s
20 identity in Defendants’ response to the Complaint. *Id.* The parties met and conferred regarding
21 whether Ms. Doe’s identity should remain confidential. *Id.* Ultimately, Defendants retained
22 their position that Ms. Doe’s identity should not remain confidential, but agreed the matter may
23 proceed under a pseudonym until the present motion is decided. *Id.* To prevent that public
24 revelation of Ms. Doe’s identity, and the attendant harm, Ms. Doe files this Motion for Leave to
25 Proceed under a Pseudonym and for the Entry of a Protective Order.

ARGUMENT

I. THE COURT HAS DISCRETION TO PERMIT A PARTY TO PROCEED UNDER A PSEUDONYM TO PROTECT THE PARTY FROM INJURY

Although the public has a right of access to judicial proceedings, “many federal courts, including the Ninth Circuit, have permitted parties to proceed anonymously when special circumstances justify secrecy.” *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). The use of pseudonyms is appropriate where it is necessary “to protect a person from harassment, injury, ridicule or personal embarrassment.” *U.S. v. Doe*, 655 F.2d 920, 922 (9th Cir. 1981).

In particular, courts have consistently allowed a party to proceed anonymously to protect the party’s privacy. *See Doe v. Madison School Dist. No. 321*, 147 F.3d 832, 833 n.1 (9th Cir. 1998), *vacated on other grounds*, 177 F.3d 789 (9th Cir. 1999) (en banc) (allowing plaintiff to file as “Jane Doe” when challenging a school’s policy to allow students to inject prayers and religious songs into the graduation program because she “feared retaliation by the community”); *see also Advanced Textile Corp.*, 214 F.3d. at 1067 n.9 (“The Supreme Court has implicitly endorsed the use of pseudonyms to protect plaintiffs’ privacy.”); *Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981) (“A plaintiff should be permitted to proceed anonymously in cases where a substantial privacy interest is involved.”).

II. MS. DOE’S NEED FOR ANONYMITY OUTWEIGHS THE PRESUMPTION OF OPENNESS IN THIS CASE

Ms. Doe requests leave to proceed under a pseudonym for two reasons: First, Ms. Doe’s injury arises out of sensitive and personal matters involving human trafficking, sexual battery, and invasion of privacy. Without the ability to proceed under a pseudonym, Ms. Doe’s injury would be exacerbated. Second, Ms. Doe currently resides in transitional housing with other victims of violence. In order to maintain the safety of all residents, Ms. Doe’s identity should be protected.

1 **A. The Sensitive And Personal Nature Of Ms. Doe’s Claims Justify Allowing**
2 **The Case to Proceed Under A Pseudonym**

3 Where litigation involves “matters of a sensitive and highly personal nature,” the affected
4 party may proceed under a pseudonym. *S. Methodist Univ. Ass’n of Women Law Students v.*
5 *Wynne & Jaffe*, 599 F.2d 707, 712-13 (5th Cir. 1979); *see also Rostker*, 89 F.R.D. at 162 (“A
6 plaintiff should be permitted to proceed anonymously in cases where a substantial privacy
7 interest is involved.”). In *National Commodity & Barter Association v. Gibbs*, 886 F.2d 1240,
8 1245 (10th Cir. 1989), the court declared:

9 In certain limited circumstances ... courts have permitted a plaintiff to proceed using a
10 fictitious name where there are significant privacy interests or threats of physical harm
implicated by the disclosure of the plaintiff’s name.

11 Here, the circumstances justify permitting Ms. Doe to remain anonymous. This litigation
12 involves matters of a highly sensitive and personal nature to Ms. Doe, including the emotional
13 and psychological impact of being a victim of human trafficking and sexual battery. *See Doe*
14 *No. 2 v. Kolko*, 242 F.R.D. 193, 194 (E.D.N.Y. 2006) (citing *Doe v. Blue Cross & Blue Shield*
15 *United of Wisc.*, 112 F.3d 869, 872 (7th Cir.1997)) (“sexual assault victims are a paradigmatic
16 example of those entitled to a grant of anonymity”). As a result of her experiences with the
17 Penzatos, Ms. Doe suffers from psychological and emotional trauma. *See* Plaintiff’s Dec. ¶ 2. If
18 her name were made public, opening her to inquiries from the press and other interested
19 individuals, Ms. Doe’s ability to recover from her trauma would be compromised. *Id.* And her
20 privacy, already severely invaded by the Penzatos, would again be at risk.

21 **B. Proceeding Under A Pseudonym Is Necessary To Protect Ms. Doe and the**
22 **Victims of Violence With Whom She Resides from Unwanted Public Ex**
23 **posure**

24 Ms. Doe currently resides in a facility which houses many women who have been victims
25 of violence. Plaintiff’s Dec. ¶ 3. If Ms. Doe’s name is made public, she will be subjected to
26 additional scrutiny, including possibly from the media. In such circumstances, Ms. Doe fears
27 bringing unwanted attention to herself and her fellow victims. *Id.* Allowing Plaintiff to proceed
28 anonymously will protect her privacy and the privacy of those around her as they attempt to
rebuild their lives.

1 Ms. Doe also fears harm from the Penzatos if her current location is revealed, even under
2 seal. *Id.* Accordingly, Ms. Doe seeks an additional order allowing any documents revealing the
3 location where she currently lives to be filed or produced in redacted form.

4 **C. The Public Interest Is Served By Allowing Ms. Doe To Proceed Under A**
5 **Pseudonym**

6 While there is a public interest in having open judicial proceedings, the public also has an
7 interest in seeing that certain lawsuits proceed anonymously that would not otherwise go
8 forward. In *Advanced Textile*, the Ninth Circuit held that the public interest in the enforcement
9 of the Federal Labor Standards Act (“FLSA”) justified allowing the plaintiff to proceed
10 anonymously. *See Advanced Textile Corp.*, 214 F.3d at 1072-73. Here, Ms. Doe alleges
11 multiple violations of the FLSA. Similarly, there is a public interest in encouraging victims of
12 human trafficking, such as Ms. Doe, to enforce their rights.¹ Allowing Ms. Doe to proceed under
13 a pseudonym would encourage similar victims of human trafficking to enforce their rights
14 without fear of additional trauma and privacy violations.

15 **III. DEFENDANTS WILL SUFFER NO PREJUDICE BY ALLOWING THE**
16 **PLAINTIFF TO PROCEED ANONYMOUSLY**

17 Defendants will not be prejudiced if Ms. Doe is permitted to proceed anonymously. Ms.
18 Doe’s identity is already known to Defendants. Nothing in Plaintiff’s proposed protective order
19 would prevent Defendants from seeking discovery or preparing or presenting their case. Thus,
20 shielding her identity from the general public would present no obstacle to Defendants’ ability to
21 mount a defense. *See Roe v. St. Louis Univ.*, Case No. 4:08CV1474, 2009 WL 910738, at *5 n.5
22 (E.D. Mo. Apr. 2, 2009) (allowing plaintiff to proceed anonymously where defendant’s ability to
23 seek discovery and challenge plaintiff’s credibility was not impaired).

24
25 ¹ This action is in part brought under the William Wilberforce Trafficking Victims Protection
26 Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat 5044 (2008). Senator Dick Durbin,
27 one of the Act’s sponsors, stated that the Act was designed to “strengthen the Federal
28 Government’s ability to prosecute traffickers, protect trafficking victims, and prevent future
crimes.” 154 Cong. Rec. S10936 (daily ed. Dec. 11, 2008) (statement of Senator Richard
Durbin).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests the Court grant her Motion for
3 the Entry of a Protective Order and to Proceed Under a Pseudonym.
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5 Dated: March 23, 2011

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